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State of Utah

DEPARTMENT OF NATURAL RESOURCES

Division of Water Rights

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REED COZENS
WEBER RIVER COMMISSIONER
PO BOX 151
LAYTON UT 84041

RE: Operation of 1938 Power Water Agreement

Dear Reed:

The purpose of this letter is to provide you instructions regarding the operation of the 1938 Power Water Agreement. As you know, we have met with many of the water users and held a public meeting on October 29, 2013 to discuss this issue. We have received comments from several entities and we have included our response to many of these comments at the end of this letter, which we are copying to interested parties. The background and concepts regarding the agreement are described in the draft document presented at the public meeting and in other records.

These instructions address three different periods: a storage period, a trade period, and a spill period.

STORAGE PERIOD

Power Company Entitlement (PCENT)

The power company is entitled to divert up to 365 cfs under its 1903 priority water right (35-8061) when it is available in priority. The power company entitlement (PCENT) is determined by calculating the natural flow of the river at Gateway and subtracting the water that prior rights are entitled to receive. The natural flow at Gateway is the measured flow at Gateway plus the net storage above Gateway plus the exports above Gateway. The lone, significant prior right on the system during the storage period is Davis and Weber Counties Canal Company's (DWCCC's) 1896 priority right to 13,000 AF of storage in East Canyon Reservoir. The remaining natural flow at Gateway, up to 365 cfs, is PCENT. The storage period starts at the end of the irrigation season on approximately October 15 and goes to April 15.

Power Water Originating Above Echo Dam (PWOAE)

During the storage period, power water may be diverted directly through the Weber-Provo Canal (WPC), it may be stored, or it may be used to generate power. In order to ensure that the power right is not enlarged, only power water originating above Echo Dam (PWOAE) may be diverted through the WPC or stored. PWOAE only exists when the natural flow of the river between Gateway and Echo Dam (minus DWCCC's portion) is not sufficient to provide 365 cfs. In some cases PWOAE may be the entire natural flow of the river above Echo Dam, but PWOAE cannot

be greater than what is needed to supply 365 cfs at Gateway. PWOAE is a crucial value because it represents the maximum amount of power water available under the agreement. PWOAE can be 1) diverted through the WPC, 2) stored, or 3) allowed to flow downstream for power generation, as described respectively in the next three paragraphs.

Power Water Diverted Through the WPC (PWDIV)

The first portion of PWOAE that needs to be accounted for is power water diverted through the WPC (PWDIV). PWDIV may be all or a portion of PWOAE on a given day. There may also be days when the amount of water diverted through the WPC exceeds PWOAE. On those days, the extra diversion should be charged to Provo River Water Users Association (PRWUA) power water storage and credited to Weber River Water Users Association (WRWUA) under Water Right 35-8739 (A9568).

Power Water Stored (PWSTO)

PWOAE that does not get diverted through the WPC may be stored. The actual amount of power water stored (PWSTO) may, however, be less than what was available to store. PWSTO includes water stored by WRWUA and PRWUA as well as water stored by the power company.

Power Water Not Diverted or Stored (PWNDS)

Not all PWOAE has to be diverted or stored. The power water not diverted or stored (PWNDS) flows down the river and is available for direct diversion into the power plant.

Withheld Weber River Waters (WWRW)

Withheld Weber River Waters (WWRW) is the sum of PWDIV and PWSTO minus any power water stored by the power company. At the end of the storage period, WWRW is divided equally between WRWUA and PRWUA.

Power Water Accounting

In addition to WRWUA's half of WWRW, they may have also stored water under Water Right 35-8739 (A9568). All of this storage, as well as any other storage belonging to them under the agreement, must be accounted for under 35-8739, which has an annual limit of 74,000 AF. PRWUA's half of WWRW should be accounted for as "power water."

TRADE PERIOD

At the end of the storage period on April 15, diversion and storage of power water ceases and the trade period begins. PRWUA may trade its power water storage across the WPC only when there are "excess flows" in the river above Echo Reservoir. This will ensure that other water rights on the system are not impaired by the trade.

Excess Flows in the River Above Echo Reservoir

Excess flow may be diverted into the WPC from the Weber River or from Beaver Creek. Excess flow is natural flow that, in the absence of the agreement, would have flowed in the stream past these diversions in order to satisfy either storage rights in Echo Reservoir or direct flow rights below Echo Dam. These "excess flows" are thus excess to the upper river, but not excess to the river as a whole.

Operating the Trade

Excess flows that are diverted into the WPC must be replaced by PRWUA's stored power water. If Echo Reservoir is filling under 35-8739 while the water is being traded across the WPC, then a like quantity of PRWUA's stored power water must be credited to WRWUA to complete the trade. The power water traded to WRWUA is part of the 74,000 AF they are entitled to store under 35-8739. If water is being traded across the WPC when the natural flow of the system is insufficient to allow storage in Echo Reservoir, then a like quantity of PRWUA's stored power water must be released below Echo Dam to satisfy direct flow demands. This trade can be completed—regardless of the priority cut on the river—to the extent that excess flows exist at the WPC diversions.

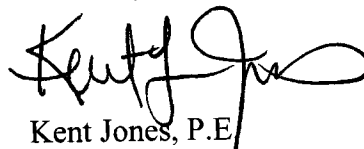
SPILL PERIOD

Power water not owned by WRWUA is stored on a space-available basis, meaning that it can be spilled out of storage if not used or traded first. Any storage owned by the power company is the first water to spill; PRWUA power water spills next. Since Echo Water is often stored in other reservoirs, a "paper spill" normally occurs before a physical spill. Once Echo Reservoir is credited with 74,000 AF of storage in any or all reservoirs, a spill begins as additional water is stored. Additional physical storage must be credited to WRWUA and any water that is "paper spilled" must be credited to the next appropriator, which is Weber Basin Water Conservancy District (WBWCD). Any PRWUA storage remaining on July 1 becomes property of WRWUA, except that WRWUA is limited to 74,000 AF of storage and additional storage is credited to WBWCD.

IMPLEMENTATION

These instructions should be followed unless and until written instructions are received from the State Engineer that modify these procedures. Thanks for your efforts in learning the system and distributing water in what has been less than optimal circumstances.

Sincerely,



Kent Jones, P.E.
Utah State Engineer

RESPONSE TO SELECTED WATER USER COMMENTS

Comment (General): Several water users requested that we provide direction on issues not specifically related to the power water agreement.

Response: The purpose of these instructions to the commissioner is to address the operation of the 1938 power water agreement, so the instructions are generally limited to that issue. We understand that there are additional concerns about operations on the system such as: priority of the various water rights, administration of storage in Smith and Morehouse Reservoir, maximizing water use for all federal projects, capturing diurnal flows, allocating extra allotment water, delivery of Echo shares, distribution in times of shortage, and other issues. We urge all parties to continue to study these issues and to continue to cooperate in addressing them. We will also continue to work with the various entities to resolve issues not specifically covered by these instructions.

Comment from Provo Reservoir Water Users Company (PRWUC): Delivery of Echo shares has priority over delivery of power water through the WPC.

Response: This comment appears to be supported by the power water agreement. We recognize that Echo Shares delivery has, at times, been difficult to coordinate with simultaneous delivery of power water and that Echo Shares delivery has not always corresponded optimally with demand. We will work with the Weber River and Provo River Commissioners, with input from the water users, to develop a process that ensures fair delivery of Echo Shares through the WPC.

Comment from WBWCD: WBWCD is dependent on high flows of the Weber River. Any changes in operation resulting in less water available jeopardizes the water supply to its customers.

Response: The intent of the instructions to the commissioner is for water to be distributed in accordance with the water rights and historical distribution practices such that there is no harm to any water right. Additionally, we expect that water rights owned by the Bureau of Reclamation will be managed by the Bureau, subject to the limitations of each of the water rights, in accordance with their interests.

Comment from WBWCD: We are supportive of online tools that will help in the accounting of water.

Response: Experience has shown us that transparency in the distribution of water helps the water users to gain trust in the system. There may be costs to some water users to make this data available on a real-time basis, but we think that the benefits to the water users will be well worth the costs.

Comment from PRWUA: In order to address disputes in a timely and cost-effective manner, there needs to be an informal process involving the state engineer, the river commissioner, and the affected parties to resolve these disputes.

Response: We are hopeful that this ongoing process of water user participation and education, in conjunction with future tools that provide transparency and clarity to operations, will help us avoid many potential disputes. However, as new issues do arise, we agree that these issues need to be addressed quickly. If there are disputes between Federal Project Operators we expect that the Bureau will take the lead in arbitrating these disputes. Disputes between other water users should be handled by the River Commissioner, if possible. When necessary, the State Engineer may issue specific instructions to the commissioner in order to address an issue.

Comment from Dennis Marchant: Winter power water should be assigned a 1938 priority date and delivered based on that date in accordance with 73-3-21.1(2)(a).

Response: Winter power water is stored under a 1903 priority date. Delivery of storage water is governed by 73-3-20(1) which says, in part, "Any person having stored that person's appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the water at the times and in the quantities as the person's necessities may require if the withdrawal does not interfere with the rights of others." This applies to storage water taken "either above or below the point where emptied into the stream, body of water or reservoir."

Comment from Dennis Marchant: Upstream storage water owned by Fish Lake Reservoir Co., Marchant Extension Irrigation Co., Smith and Morehouse Reservoir Co., Kamas Lake, and Weber Basin should not be called on to implement upstream Echo Exchanges.

Response: We believe this to be correct. Echo storage may only be exchanged above the reservoir by diverting excess natural flow.

Comment from Dennis Marchant: Water delivered through the WPC should be measured at the points of diversion and at the end of the canal to properly account for gains or losses occurring in the canal.

Response: Since 1970 the commissioner has reported the WPC measurement at the end of the canal at the gage in Francis. However, between 1932 and 1969 the commissioner reported measurements at the beginning of the canal in Oakley, or at Oakley plus the diversion from Beaver Creek, or at Oakley and Francis. It's not clear why the change was made in 1970, but perhaps it was because it was easier to make one measurement rather than two or three. For 2014 we are instructing the commissioner to continue to use the measurement obtained at Francis as in recent years. However, we are reviewing this aspect of the operation and may change it in a future year.

Comment from WRWUA: The priority of original water rights should be followed except where change applications have been approved.

Response: Water right priorities are the basis for distribution of water in Utah and must be protected. Changes, exchanges, and agreements between water users may not operate to the detriment of any other water user. The primary purpose for issuing instructions to the commissioner regarding the power water agreement, while following a public process to allow for input from water users, is to ensure that third-party water rights are not impaired.

Comment from WRWUA: There needs to be better measurement, accounting, reporting, coordination and communication regarding the water.

Response: These things are all important in the operation of the river. We support improvements in all of these areas and believe that this ongoing process of water user participation and cooperation has been, and will continue to be, helpful in addressing these areas.

Comment from Bureau of Reclamation: We hope to have regular meetings in the future with PRWUA, WRWUA, WBWCD, and the State to discuss water operations of the Weber River Basin.

Response: We are supportive of ongoing meetings and discussions to coordinate the operation of the Weber River and to address ongoing issues.